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IN THE

# Supreme Court of the United States,

**FEBRUARY TERM, 1953.**

**No. 387 Misc.**

CORINNE C. WATERMAN,

*Petitioner,*

—against—

SAUL SCHATTEN, ESTATE OF LOUIS SCHATTEN, his Executors, Administrators and Assigns, and SCHATTEN EQUITIES, INC.,

*Respondents.*

## BRIEF OF THE RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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THE COURT PRESS, N. Y. C.

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## BRIEF OF THE RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK.

*To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

This is an application by the petitioner, Corinne C. Waterman, for a writ of certiorari to review the decision of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, dated May 22nd, 1951 unanimously affirming the judgment of the Supreme Court, Bronx County, entered on November 28th, 1949, after trial without a jury, dismissing the complaint, and from the decisions of said Appellate Division, dated May 22nd,

1951, affirming certain intermediate orders entered by the Supreme Court, Bronx County prior to the trial.

The attention of this Honorable Court is respectfully called to the fact that petitioner applied to the Court of Appeals of the State of New York for leave to appeal from said orders of affirmance of the Appellate Division but her motion for leave to appeal was denied by the Court of Appeals on October 18th, 1951.

**Preliminary Statement.**

An action was brought by petitioner to recover damages for personal injuries allegedly sustained by reason of an allegedly defective refrigerator in the apartment occupied by petitioner in respondents' building, although prior to the commencement of this action petitioner recovered against respondents, and was paid, a judgment for $105 on the identical cause of action on a counterclaim interposed by her in a summary proceeding in the Municipal Court, Borough of Bronx, Second District. The amended complaint contains further purported causes of action for "broadcasting libellous and slanderous communications about her"; property damages; damage for the alleged loss of a typewriter in a burglary in her apartment committed by unknown persons; alleged "malicious" summary proceedings, etc.

Prior to and after the commencement of this action, respondents were compelled to institute various summary proceedings against petitioner for non-payment of rent. In February, 1949 the parties were in the

Municipal Court, Second District, Bronx, on such a proceeding and as a result of petitioner's conduct a summons was obtained in the Magistrate's Court, Bronx County, against her for disorderly conduct. At a hearing thereon before Magistrate Markewich on February 25th, 1949, the petitioner was found guilty, and was committed to Bellevue Hospital Psychiatric Division for observation.

On March 11th, 1949, a hearing was held at Bellevue Hospital before Mr. Justice Aaron J. Levy at which hearing the petitioner was represented by counsel, Irwin M. Levy, Esq., of 51 Chambers Street, New York City, whom she admits was retained by her or in her behalf.

At said hearing petitioner's counsel informed Mr. Justice Levy that several conferences were had with respondents' attorney in the matter and that the parties had agreed that petitioner would vacate the apartment and that the parties would settle all their differences by the mutual exchange of general releases and stipulations discontinuing all actions, proceedings and appeals between them, and the petitioner was discharged.

In the presence of her said attorney, Mr. Levy, petitioner executed and delivered her general releases and stipulations discontinuing this action and certain appeals pending in the Appellate Term, First Department, and the respondents executed and delivered their general release in her favor. The releases signed by petitioner bear the signature of her attorney, Irwin M. Levy, as a witness thereof. The petitioner, in furtherance of said settlement, vacated the apartment.

**The Evidence on Behalf of Respondents.**

In October, 1949, the action appeared on the day calendar of the Supreme Court, Bronx County, for trial. Upon respondents' advising the Justice then presiding that the action was settled and discontinued, petitioner asserted that the releases and stipulations of discontinuance executed and delivered by her were forgeries and were obtained by duress. The case was thereupon marked ready and thereafter came on for trial before Mr. Justice Henry Clay Greenberg, in Part II of said Court, without a jury, on October 17th, 1950.

Although petitioner appears in person herein, she was represented at the trial by an attorney, Hallam M. Richardson, Esq., who conducted the trial in her behalf.

The general releases and stipulations of discontinuance were introduced into evidence, along with testimony and evidence concerning the facts and circumstances surrounding the execution and delivery thereof. The Trial Court found that the releases and stipulations were not forged, and that there was no evidence of duress, fraud or intimidation. The opinion of the Trial Court is included herein in Appendix A.

**Subsequent Proceedings.**

The petitioner appealed to the Appellate Division of the Supreme Court of the State of New York, First Department, from the judgment entered in the Supreme Court, Bronx County, on November 28th, 1949, dismissing the complaint, after trial and on the

merits, and also appealed from several intermediate orders, including an order of the Trial Court, which sat without a jury, denying her motion for an order vacating said judgment.

On May 22nd, 1951, the Appellate Division of the Supreme Court of the State of New York, First Department, entered orders unanimously affirming the judgment appealed from and unanimously affirming all the intermediate orders appealed from, including the order to vacate the judgment, all without opinion.

Subsequently petitioner moved in the Appellate Division, First Department, for a reargument of the appeals or for leave to appeal to the Court of Appeals and said motion was denied on June 26th, 1951.

Thereafter petitioner moved in the Court of Appeals of the State of New York for leave to appeal from said orders of the Appellate Division and said motion was denied on October 18th, 1951.

## POINT I.

### The issues herein involve questions of fact.

The entire question surrounding the circumstances of the execution and delivery of the general releases and stipulations of discontinuance was before the Trial Court, which sat without a jury, at which trial the petitioner was fully represented by counsel. The general releases and stipulations of discontinuance were executed by petitioner in the presence of her attorney, whose signature appears on the releases as a witness thereto.

The testimony and evidence adduced at the trial fully substantiate and support the Trial Court's findings that there was no forgery or duress with respect to the releases or discontinuances executed by petitioner. It is clear from the decision of the Court that it took full cognizance of all the facts in deciding these issues, and that the dismissal of the complaint was fully justified by the evidence before the Trial Court.

It is respectfully submitted that since the trial involved pure questions of fact and the findings of the Court were fully supported by the evidence, there are no issues which should be reviewed by this Court.

## POINT II.

### No constitutional question is involved.

Petitioner was represented by counsel, Hallam Richardson, Esq., of the New York bar, during the trial of the action at the Supreme Court, Bronx County. She was also represented by counsel, Irving Levy, Esq., of the New York bar, at the time of the execution and delivery of the general releases. Both of these attorneys were either retained by her personally or by members of her family in her behalf, and her rights were fully protected by them. The record does not indicate any invasion, in any respect, of her constitutional rights nor is there any constitutional issue involved in any of the litigation herein which petitioner seeks to have reviewed by this Honorable Court.

## CONCLUSION.

**It is respectfully submitted that the petition for writ of certiorari to the Appellate Division of the Supreme Court of the State of New York should be denied.**

Dated, New York, March 13, 1953.

Respectfully submitted,

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